sider that for the reasons they have already given the function of a bill of lading or similar document of title is not normally to give delivery as between consignor and consignee. This has usually already happened on shipment and its real function is to give the consignee a document which he can immediately negotiate. Accordingly, the delivery of such a document as the mate's receipt was supposed to be is inconsistent with the notion that the pledge was still incomplete.

Their Lordships also attach importance to the finding of fact by the trial judge and sustained in the Federal Court that all parties knew what was going on. In other words, the ship knew of the bank's interest in the goods; and so of the risk she was taking, and for which she covered herself by an indemnity, in delivering the goods otherwise than to the named consignee.

For these reasons their Lordships have concluded that in this case delivery of the goods to the bank was made on shipment, that the pledge of them to the bank was thereby completed and that the bank succeeds in its claim for conversion.

Their Lordships therefore dismiss the appellants' appeal. With regard to costs it is to be observed that the major issue both in the evidence and in the argument before all courts was that of the alleged custom, and the respondents have failed on that issue, but they have on other grounds successfully resisted the appeal. Their Lordships vary the Federal Court's order as to costs so as to provide that the appellants pay two-thirds of the respondents' costs in the court below. The appellants must also pay two-thirds of the respondents' costs of this appeal

Appeal dismissed.
Order as to costs varied.

Solicitors: *Linklaters & Paines* agents for *Drew & Napier; Coward Chance* agents for *Allen & Gledhill.*

SINGAPORE REPORT

ZUELLIG (GOLD COIN MILLS) v. M.V. "AUTOLY" (OWNERS) THE M.V. "KANTANG"

[O.C.J. (Chua J.) October 30, 1970]

[Singapore — Admiralty Suit No. 51 of 1968]

Shipping — Carriage of goods by sea — Seaworthiness — Perils of the sea — Obligation of shipowner to exercise due diligence — Carriage of Goods by Sea Ordinance (1955 Ed. Cap. 173) Hague Rules Arts. III & IV.

The plaintiffs sought to recover damages under a bill of lading covering 1000 bags of maize received by the defendants for carriage from Singapore to Penang on the "Kantang". The bill of lading was expressly made subject to the Carriage of Goods by Sea Ordinance (1955 Ed. Cap. 173). On the voyage in question the "Kantang" sank in international waters in the Straits of Malacca on August 27, 1967, near the Sembilan Islands and the cargo she was carrying was lost.

The plaintiffs alleged that the defendants failed in breach of their duty to provide a seaworthy ship and failed before and at the beginning of the voyage to exercise due diligence to make her seaworthy as required by article III r. 1(a) of the Hague Rules Scheduled to the Ordinance. The defendants denied liability contending that the loss was caused by perils of the sea within the meaning of article IV r. 2(c) of the Rules. They also denied that the vessel was unseaworthy or that they had failed to use due diligence before and after and at the beginning of the voyage to render her seaworthy. They contended that the "Kantang" was at all material times a completely seaworthy vessel and was properly manned, equipped and supplied. They alleged that the sinking was caused by perils of the sea during rough weather, and contended that the unusually rough sea required that it be classified as perils of the sea exempting them from liability.

On the evidence the court found that the weather encountered by the "Kantang" was not of such a catastrophic nature or so overwhelming as to constitute perils of the sea and came to the conclusion that the vessel sank as it was unseaworthy in that the fastenings of the bow planking of the vessel were unsound whereby the bow planking worked loose in the heavy seas allowing water to enter the vessel and causing her to sink. The court rejected the plaintiffs' submission that if the defendants had not made out a case of perils of the sea then the plaintiffs were entitled to succeed.

The defendants adduced evidence to show that they had before and at the beginning of the voyage exercised due diligence to make the vessel seaworthy.

Held: (1) when the contract of carriage was subject to the Hague Rules, those rules exclude the common law absolute warranty of seaworthiness and substitute therefor an obligation on the part of the shipowner to exercise due diligence, before and at the beginning of the voyage, to make the ship seaworthy. The burden of proving the exercise of due diligence was on the defendants in this case;

(2) the shipowner's obligation to exercise due diligence "is limited to due diligence in his capacity as carrier and to such duties as appertain to a prudent and careful carrier acting as such by the servants and agents in his employment; but within this limitation the carrier's obligation is to see, if not with his own eyes, at any rate by the eyes of proper competent servants or agents for whose diligence he makes himself responsible, that the ship really is seaworthy; and if anyone of those servants or agents is negligent he will be liable";

(3) on the evidence in this case, the defendants had exercised due diligence to make the "Kantang" seaworthy and therefore they were entitled to the protection of the Ordinance.

Case referred to:-

(1) *The Xantho* (1887) 12 App. Cas. 503.

ADMIRALTY SUIT.

K. C. Chan for the plaintiffs.

C. H. Smith for the defendants.

Cur. Adv. Vult.

Chua J.: In this action the plaintiffs sue the defendants the owners of the motor vessel "Kantang", to recover damages under a bill of lading covering 1000 bags of Thailand Maize received by the defendants for carriage from Singapore to Penang. The bill of lading was expressly made subject to the Singapore Carriage of Goods by Sea Ordinance (Cap. 173). On the voyage from Singapore to Penang the "Kantang" sank in international waters in the Straits of Malacca on the 27th August, 1967, between Pulau Pangkor and Penang near the Sembilan Islands and the cargo she was carrying was lost and four members of the crew were drowned.

The plaintiffs allege that the defendants failed in breach of their duty to provide a seaworthy ship and

failed, before and at the beginning of the voyage, to exercise due diligence to make her seaworthy as required by Article III, Rule 1 (a) of the Rules scheduled to the Singapore Carriage of Goods by Sea Ordinance. The particulars of unseaworthiness given by the plaintiffs were:

"(a) The hull of the vessel was unsound;

(b) The fabric of the vessel was unsound;

(c) The vessel was insufficiently caulked;

(d) The iron fastenings of the planking of the vessels were unsound, whereby the bow planking worked loose allowing water to enter the vessel causing it to sink at the material time;

(e) The crew of the vessel was inefficient or insufficiently experienced at the material time to man the vessel for the voyage undertaken;

(f) The engines of the vessel were unsound."

The defendants deny liability contending that the loss of the plaintiffs' goods was caused by perils of the sea within the meaning of Article IV Rule 2(c) of the Rules scheduled to the Singapore Carriage of Goods by Sea Ordinance. The perils of the sea pleaded were as follows:

"At about 9.00 p.m. on the 26th August 1967 the wind was blowing in north west direction and continued so when at about 11.00 p.m. the wind became stronger and the sea became rough with slight drizzle. The sky was overcast and dark. The ship was tossing, rolling and pitching. The weather continued to be very rough and the wind velocity was estimated to be about 30 m.p.h. This condition continued up to 2.10 a.m. on the 27th August 1967 when the engine room of the ship was flooded with water and the heavy waves were so strong that one of the two life boats with members of the crew leaving the boat was overturned. The ship sank after the members of the crew have abandoned the ship."

In their pleadings the defendants say that they would rely also on the provisions of Article IV Rule 2(a) in that the loss resulted from "act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship," but this point was not pursued at the trial.

The defendants further deny that the vessel was unseaworthy or that they had failed to use due diligence before and at the beginning of the voyage to render her seaworthy.

The defendants say that the "Kantang" was at all material times a completely seaworthy vessel, was properly manned equipped and supplied.

At the trial counsel for the plaintiffs submitted that the two main issues are (1) was the loss of the cargo caused by the perils of the sea? and (2) did the defendants exercise due diligence to make the ship seaworthy?

The first question that falls to be decided is whether the loss of the plaintiffs' goods was caused by perils of the sea as alleged by the defendants If it was then under Article IV Rule 2(c) of the Rules "neither the carrier nor the ship shall be responsible for loss or damage arising or resulting" therefrom.

The master of the "Kantang" Capt. Roseli bin Sandang gave his evidence *de bene esse* and he was the defendants' witness. His evidence of the events in the Straits of Malacca is shortly this. Near Pulau Pangkor at about 9 p.m. on the 26th August the wind was strong and the waves were high and he had to reduce speed of his vessel in order to combat the waves. The vessel was pitching. The weather worsened as time went on. He saw that three pieces of plank at the bow of the ship had been dislodged. He said "Probably because the pitching was too strong and that had caused the planks to be dislodged." He tried to save the ship. He ordered the crew to cover the hole with canvas. The ship was tilting with its bow downwards and they could not find the opportune moment to cover the hole with the canvas. One life boat was successfully lowered but as soon as the life boat touched the water a heavy wave came and the life boat capsized. Another life boat was lowered but there were heavy waves and the life boat was filled with water. The crew were ordered to abandon ship. The boat sank at 2 a.m. on the 27th August.

In cross-examination the Master said that he had encountered similar weather before even in smaller vessels. In answer to the question: "Why is it that the ship could not take that weather? his answer was: "Because of the condition of the ship." He said that he could not estimate the speed of the wind but it was strong. He also said that the vessel sank because the planks dislodged when they had no business to dislodge.

In his written statement to Capt. Callender of the Singapore Adjusters & Surveyors Co. Ltd. (AB. 1) he said that the speed of the wind was 30 m.p.h.

It is submitted by counsel for the defendants that the planks were dislodged due to a floating object hitting the bow of the vessel. This is discounted by the Master (see his evidence at p. 95). This suggestion was put to the Master only in re-examination.

The plaintiffs called Foong Sze Fook, Asst. Director, Meteorological Service, Singapore, (P.W. 5) to give evidence on the weather reports for the 26th and 27th August, 1967, made at the Meteorological Stations at Penang Airport and at the Sitiawan Airfield near the Sembilan Islands. He said that these reports might be considered as representative of the Northern part of the Penang to the Sembilan Islands sea area. His evidence as to the weather is this:

"the weather report for 2130 hrs. (on 26th August) — fair weather calm *i.e.* no rain and no wind. Next report at 2230 hours — rain N.W. wind 5 knots. Next at 2330 hrs. — S.W. wind 20 knots, heavy rain. The heavy rain lasted for another 2 hours but the wind dropped to 10 knots 1 hr. 45 minutes later...."

Midnight local time — S.W. wind 20 knots, heavy rain which persisted for about 2 hrs. up to 0200 hrs. after which intermittent moderate N.W. wind 10 knots. Those conditions prevailed for the rest of the morning."

He said:

"These storms are regular features of the sea area in question. Statistics show they occur at an average of 3 to 4 times during the month of August.

Q. It has been suggested that a vessel passing along that area, proceeding North to Penang, encountered severe weather with wind force of 30 knots for a continuous duration of 5 hours or so between 2200 hrs. on 26th August to 0230 hours on 27th August. Is there anything in your record to substantiate this?

A. From all available records the suggestion appears to be improbable. Not only is that suggestion not supported by weather observations, from nearby meteorological stations but statistics of storms of this nature show that persistent wind of 30 knots lasting 5 hours has never been recorded or reported from the sea area in question.

Q. What duration and what speeds does your record show?

A. Persistent winds of more than 30 knots have never been recorded to last for more than 15 minutes."

The weather reports of the Penang Port Commission are in evidence (AB. 18 and 19). The reports show that between 2000 to 2400 hrs. on the 26th August, 1967, the wind was of moderate force, the sea rough with moderate swells and from 00.00 hrs. to 400 hrs. the wind was of moderate force, choppy sea and moderate swells.

The sinking of the vessel was on the evidence due to the vessel springing a leak when 3 pieces of plank got dislodged from the bow of the ship. The defendants say that the sinking was caused by perils of the sea during rough weather. The defendants contend that the unusual rough sea requires that it be classified as perils of the sea exempting them from liability.

Lord Herschell in *The Xantho*,[1] said (at p. 509):

"I think it clear that the term 'perils of the sea' does not cover every accident or casualty which may happen to the subject matter of the insurance on the sea. It must be a peril "of" the sea. Again, it is well settled that it is not every loss or damage of which the sea is the immediate cause that is covered by these words. They do not protect, for example, against that natural and inevitable action of the winds and waves, which results in what may be described as wear and tear. There must be some casualty, something which could not be foreseen as one of the necessary incidents of the adventure.

The test, in essence, is one of foreseeability. Was the weather encountered unusual and beyond reasonable expectation?

In the present case I find that the evidence of the Master of the "Kantang" as to the extent of the storm cannot be relied on. The evidence of the Assistant Director, Meteorological Service was clear that the weather between the 26th August and 27th August was not unusual or abnormal or violent or overwhelming or unexpected for the voyage during that time of the year at that place. The Master himself said that he had encountered similar weather before even in a smaller vessel. I find that the weather encountered by the "Kantang" was not of such catastrophic nature or so overwhelming as to constitute perils of the sea. I have come to the conclusion that the vessel sank as it was unseaworthy in that the fastenings of the bow planking of the vessel were unsound whereby the bow planking worked loose in the heavy seas allowing water to enter the vessel causing her to sink.

It is submitted on behalf of the plaintiffs that if the defendants have not made out a case of perils of the sea then the plaintiffs are entitled to succeed. I am unable to agree with this submission.

At common law a shipowner by contracting to carry goods in a ship, in the absence of express stipulation, impliedly undertakes that his ship is seaworthy but where the contract of carriage is subject to the Hague Rules, that is the rules set out in the Schedule to the Singapore Carriage of Goods by Sea Ordinance, as is in the present case, those rules exclude the absolute warranty of seaworthiness and substitute therefor an obligation on the part of the shipowner to exercise due diligence, before and at the beginning of the voyage, to make the ship seaworthy. The burden of proving the exercise of due diligence is on the defendants in this case.

The shipowner's obligation to exercise due diligence "is limited to due diligence in his capacity as carrier and to such duties as appertain to a prudent and careful carrier acting as such by the servants and agents in his employment; but within this limitation the carrier's obligation is to see, if not with his own eyes, at any rate by the eyes of proper competent servants or agents for whose diligence he makes himself responsible, that the ship really is seaworthy; and if anyone of those servants or agents is negligent he will be liable." (35 *Halsbury* 3rd Ed. p. 520).

The "Kantang" was formerly called "Loh Sie Lee" and was registered in the Port of Singapore. The year of build of the vessel is not known, but it was registered in Singapore in 1950. It was a wooden motor vessel of 155 gross tonnage. In May, 1967, the defendants, Hermes Autolycus Shipping Corporation, a limited liability company incorporated in the Republic of Panama with offices in Hong Kong, through their agents in Singapore, Hermes Assis Shipping & Trading Ltd., bought the vessel for $15,000 for the Singapore local trade. Before the vessel was purchased the agents of the defendants had the vessel surveyed by Capt. D. J. Herring, marine surveyor (P.W. 1). At that time the vessel was lying partly afloat at low water off the jetty at Tanjong Rhu.

The findings of the survey were as follows: (Ex. P1).

"The year of build of the vessel is not known neither are any details of the building and installation of the Engine available. I understand that the Loadline Certificate expired in September, 1963 and since this time the vessel has been laid up. The vessel is described as a wooden single deck vessel with one mast, raked stem, counter stern, carvel built with three wooden bulkheads. The engine is described as a two cycle single acting internal combustion giving a speed of 9 knots.

The vessel is badly maintained and deterioration of the iron work throughout is particularly noticeable whereas the timbers where seen are noted to be firm and sound.

The hull externally was generally in poor condition the caulking would require renewal throughout. The underwater portion of the vessel was not available for my inspection and I estimate two-thirds of the lengths of the vessel was sitting in soft mud.

In my opinion the present day value of the vessel as it is would be M$15,000."

In cross-examination Capt. Herring said that if the iron work was changed and the caulking was done throughout and any defective timber was changed the vessel would be seaworthy.

The defendants intended to have the vessel registered under the Panama flag after she was repaired and with that in view the defendants' agents called Capt. R. N. Frappell the authorised surveyor of the Govern-

ment of the Republic of Panama to survey the vessel for the issuance of certain trading certificates on behalf of the Panamanian Government. Capt. Frappell was and is still the manager of International Inspection & Testing Corporation, Singapore, known as Inteco. The Singapore Company is a subsidiary of an American company of the same name with offices throughout the Far East and Singapore.

Capt. Frappell (D.W. 3) inspected the vessel in May, 1967. He said that he made a superficial examination when the vessel was afloat. The above water planking was generally sound, the deck planking was generally sound, the internal wooden frames he believed to be sound, and the fastening bolts had corroded in certain places.

Capt. Frappell advised the defendants' agents that the vessel should be placed upon a slipway so that the hull under the water area could be fully inspected and examined.

The vessel was then put on a slipway of Sing Chye Huat Shipyard.

On the 24th May, 1967, Capt. Frappell directed his assistant to examine the vessel. The assistant reported his findings to Capt. Frappell and on the following day Capt. Frappell himself attended the slipway and re-examined the ship and confirmed his assistant's findings. At that time repair work on the vessel was in progress.

While the repair work was in progress Capt. Frappell made one or two visits to the slipway. The hull of the vessel was repaired under Capt. Frappell's recommendations. His recommendations were:

(1) the renewal and replacement of defective side and bottom planking;

(2) the renewal of corroded iron works securing bolts;

(3) the caulking of the vessel's hull throughout.

Some twenty planks were renewed. He did not supervise the repairs. In cross-examination Capt. Frappell said that "in the present case for the size of the vessel it would have been prudent to have a qualified person to supervise the repairs".

When the repairs were completed, Capt. Frappell inspected the vessel and carried out the normal procedure to test the hull and he was satisfied with the repairs to the hull. The other repairs were done later.

Capt. Frappell again inspected the vessel on the 25th July. The vessel had already been registered under the Panama flag. The vessel was then lying afloat. His visit this time was for the purpose of surveying the vessel and issuing a Load Line Certificate and a Safety Equipment Certificate which were required under the provisions of the Singapore Merchant Shipping Ordinance. The Load Line Certificate was also required by the Panamanian Government. He also carried out internal inspection of the vessel — the cargo hold and the engine room. He did not see any evidence of seepage. As regards the safety equipment a number of items were found to be defective or missing and they were subsequently replaced.

Capt. Frappell later issued the Load Line Certificate and the Safety Equipment Certificate on behalf of the Panamanian Government.

The cost of the repairs was about $15,000 out of which $5,000 was spent on the engine, $5,000 for woodwork, ironwork and caulking and $5,000 for paintwork and accessories.

After the vessel was repaired it was insured with American International Underwriters for $30,000. Before the insurance was effected the insurance company stipulated that the vessel be inspected by a surveyor nominated by them. The insurance company nominated Capt. Callender of Singapore Adjusters & Surveyors Co. Ltd., Licensed Marine Surveyors.

Capt. Callender reported (Ex. P.5), *inter alia*, that "a superficial inspection of the hull above the waterline revealed the woodwork to be in a reasonable condition" and his conclusions were that "Based on our above findings and without the benefit of sighting the vessel in drydock, opening her main engines, tanks, ceilings and with all her certificates in force, it is our opinion that she is in a seaworthy condition for Singapore Local Trade Limits."

The vessel made her first voyage from Singapore to Penang on the 31st July, 1967. She carried 100 tons of maize for the plaintiffs. After discharging her cargo at Penang the vessel went to Kantang in Southern Thailand. According to Bahari bin Hamzah (D.W. 2), who was employed by the defendants as the pilot, the weather on that voyage from Penang to Kantang was stormy and the vessel was pitching. At Kantang the vessel took on a cargo of live buffaloes for Singapore. The vessel returned to Singapore on the 13th August. There was no leak.

A new Master, Capt. Roseli bin Sandang, and a new Chief Engineer were engaged for the second voyage. There were also a number of changes in the crew.

According to the defendants' agents nothing was done between the 13th August and the 25th August "to ensure sound maintenance of the vessel after the first voyage". Capt. Roseli, however, said that just before setting sail he examined the vessel completely and he found that it was in a good condition. First he checked the caulking between the plates. He did this by going round the vessel in a sampan and made a visual inspection for one hour. He spent two hours inspecting the hold.

The day before the vessel sailed repairs were done to the vessel's engine. During the voyage, when the vessel was off Tanjong Keling, Malacca, the engine gave trouble and the vessel anchored there while repairs were carried out to the engine. The repairs took 22 hours. The vessel sailed again at 10.30 p.m. on the 26th August. When the vessel was off Pulau Pangkor rough weather was encountered and the vessel sank at 2.10 a.m. on the 27th August.

Now those are the facts.

The question now arises whether the defendants have discharged the burden, which their contract of

carriage casts upon them, of showing that they have before and at the beginning of the voyage exercised due diligence to make the vessel seaworthy.

The defendants in discharge of this burden in their particulars pleaded that "the diligence taken by the defendants to secure the seaworthiness of the *M.V. Kantang* was to have the vessel surveyed by a qualified surveyor on or about the 27th July, 1967 when the vessel was certified to be seaworthy and no alteration or repairs were advised. Subsequently, a qualified surveyor appointed by the insurance company which insured the said vessel also reported that the vessel was seaworthy and in good order. The Master of the "Kantang" examined the vessel prior to sailing and her engine was repaired and put in order prior to sailing."

Are the contentions of the defendants sound?

I am satisfied that Capt. Roseli inspected the vessel before she left Singapore and that there was no leakage. It is true that the captain made only a visual inspection but I do not think it is obligatory upon a ship's officer on the commencement of a voyage to go and tap every plank in the hull to find if it has a defect or not. I am satisfied that Capt. Roseli had exercised due diligence.

There is no doubt that there was some bad workmanship in fixing the planks of the hull which was entirely the fault of the workmen employed by the ship repairer. The real cause of the planks loosening will never be known. In the present case the defendants had Capt. Frappell to advise them on the repairs to the vessel. Capt. Frappell has a large experience in the repairs and building of ships including wooden ships. I am satisfied on the evidence that Capt. Frappell had exercised due diligence when examining the vessel and that in fact he carried out the examination with reasonable skill and competence and had not been negligent.

I find that the defendants had exercised due diligence to make the "Kantang" seaworthy and therefore the defendants are entitled to the protection of the Ordinance.

The claim of the plaintiffs is dismissed with costs.

Claim dismissed.

Solicitors: *Lee & Lee; Laycock & Ong.*

MALAYSIAN REPORTS

RAMAMOORTHY v. MENTRI BESAR OF SELANGOR & ANOR.

[F.C. (Ong C.J. (Malaya), Gill & Ali F.JJ.) June 5, 1970]

[Kuala Lumpur — Federal Court Civil Appeal No. X 53 of 1969]

Government Proceedings — Relief — Specific performance — Whether court can make order — Declaratory order — Government Proceedings Ordinance, 1956, s. 29(1)(a).

Practice and Procedure — Declaration — Application for — Proper procedure — Joinder of parties — R.S.C. 1957, O. 54A r. 1A.

Land Laws — Auction — Sale of land to recover arrears of quit rent — Service of notice on proprietor — Irregularity — Annulment of sale — Discretion of Mentri Besar — Land Code (F.M.S. Cap. 138), ss. 204, 220 and 221.

This was an appeal from the judgment of Abdul Aziz J. ([1969] 2 M.L.J. 97) dismissing the appellant's action (a) for a declaration that the annulment by the Mentri Besar of Selangor (first respondent) of the sale by public auction, for the recovery of arrears of land revenue, of land held under Grant No. 9562 for Lot No. 1843 in the Mukim of Rawang in the district of Ulu Selangor was null and void, (b) for an order by way of specific performance that the second respondent do transfer the said land to the appellant and (c) for damages. The first respondent had annulled the sale on the ground that the notice for sale had not been properly served.

Held, dismissing the appeal: (1) by virtue of section 29 of the Government Proceedings Ordinance, the appellant's claim for specific performance was rightly disposed of by the learned trial judge;

(2) although the learned judge was not right in taking the point that the appellant should have applied for the declaration sought by way of originating summons under O. 54A r. 1A instead of by a specially indorsed writ, because the appellant was also asking for the consequential relief of damages, in this case he was not influenced by the alleged procedural irregularity in dismissing the action;

(3) in this case, the registered proprietor's rights would be placed in jeopardy, if the declaration was made, because his ownership over the property remained intact until the auction sale was made final and conclusive. So long as he was the owner of the land, in respect of which some sort of declaration was sought, it was but right and proper that he should have been made a party;

(4) service of the notice of sale on the registered proprietor was the first step in the proceedings to recover arrears of land rent. As the Mentri Besar annulled the sale solely on the ground that the notice of sale was not served as required by the Land Code, submission of counsel for the appellant that he had neither jurisdiction nor valid grounds for annulling the sale must be rejected;

(5) so long as there was something in writing to constitute an order of annulment of the sale, there was sufficient compliance with the provisions of section 221(i) of the Code.

Case referred to:-

(1) *Barlow* v. *Vestry of the Parish of St. Mary Abbotts Kensington* (1886) 11 App. Cas. 257.

FEDERAL COURT.

D. P. Vijandran for the appellant.

Haji Mohamed Azmi bin Dato Haji Kamaruddin (Senior Federal Counsel) for the respondents.

Gill F.J.: This is an appeal from a judgment of Abdul Aziz J. dismissing the appellant's action (a) for a declaration that the annulment by the Mentri Besar